



May 6, 2021

VIA EMAIL

Jennifer Scutchfield
Assistant Secretary of State
Office of Kentucky Secretary of State
700 Capital Avenue, Suite 152
Frankfort, KY 40601
jscutchfield@ky.gov

Re: Open Records Act Request

Dear Open Records Officer:

Pursuant to the Kentucky Open Records Act (KORA), codified at KRS §§ 61.870 et seq., American Oversight makes the following request for records.

On February 10, 2021, Kentucky Senate President Robert Stivers introduced SB 228, legislation that would transfer authority for filling a vacant U.S. Senate seat from the governor to a committee of the same political party as the departed senator.¹ A spokesperson for Senator Stivers wrote of the bill, “Leader McConnell has discussed the legislation with President Stivers and is fully supportive of the measure,”² fueling speculation regarding the timing and intent of SB 228’s introduction.

American Oversight seeks records with the potential to shed light on the proposed changes to senate vacancy rules in Kentucky, including the timing of any related conversations between legislative leadership and other Kentucky officials.

Requested Records

American Oversight requests that your office produce copies of the following records within three business days:

All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) between (1) Secretary of State Michael Adams or Senior Advisor David Harris, and (2) any of the individuals specified below:

¹ Morgan Watkins, *With Mitch McConnell’s Backing, Kentucky’s Senate President Seeks to Change Vacancy Rules*, Louisville Courier Journal (updated Feb. 15, 2021, 5:14 PM), <https://www.courier-journal.com/story/news/politics/ky-general-assembly/2021/02/15/mitch-mcconnell-backs-plan-change-how-kentucky-fills-u-s-senate-vacancies/6730656002/>.

² *Id.*



1. Senate Minority Leader Mitch McConnell
2. Anyone communicating on behalf of Sen. McConnell, including from an email address ending in @mccconnell.senate.gov or @teammitch.com
3. Attorney General Daniel Cameron
4. Communications Director to the Attorney General Elizabeth Goss Kuhn
5. Senator Robert Stivers
6. Senator Tom Buford

Please provide all responsive records from September 1, 2020, through the date the search is conducted.

Pursuant to KRS § 61.880(1), American Oversight requests that you notify us within three workdays as to whether you will comply with this request.

Statement of Noncommercial Purpose

This request is for noncommercial purposes, and American Oversight respectfully requests a waiver of any fees associated with processing this request for records. To the extent any fees are charged, pursuant to KRS § 61.874(3), American Oversight asks that such fees be limited to the actual cost of reproduction and exclude the cost of agency staff time.

This request is primarily and fundamentally for non-commercial purposes. American Oversight seeks the records requested to inform the public regarding conversations between Kentucky's legislative leadership and U.S. Senate Majority Leader Mitch McConnell concerning potential senate vacancies.³ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including the timing of any conversations regarding potential vacancies.

Furthermore, as a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

³ See Watkins, *supra* note 1.

⁴ American Oversight currently has approximately 16,340 followers on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 12, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 12, 2021).

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;⁶ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁷ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁸ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁰ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹¹

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁸ *See generally Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁹ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹⁰ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹¹ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* KRS § 61.878(4). If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Khahilia Shaw at foia@americanoversight.org or (202) 539-6507. Also, if American Oversight's request

for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Khahilia Shaw
Khahilia Shaw
on behalf of
American Oversight